

## **EXHIBIT 2**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In Re: ) **Case No. 19-34054-sgj-11**  
 ) Chapter 11  
 )  
HIGHLAND CAPITAL ) Dallas, Texas  
MANAGEMENT, L.P., ) August 31, 2022  
 ) 9:30 a.m. Docket  
Reorganized Debtor. )  
 ) STATUS CONFERENCE RE: MOTION  
 ) FOR FINAL APPEALABLE ORDER  
 ) FILED BY JAMES DONDERO  
 ) [3406]  
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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

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1                   DALLAS, TEXAS - AUGUST 31, 2022 - 9:40 A.M.

2                   THE COURT: All right. We have a status conference  
3 in the Highland matter. So, before I get appearances, let me  
4 just kind of set the stage here. The impetus for this was a  
5 motion filed by six different entities, including James  
6 Dondero and NexPoint and HCMFA and Dugaboy Family Trust. It  
7 was titled a Motion for Final Appealable Order and Supplement  
8 to Motion to Recuse Pursuant to 28 U.S.C. Section 455.

9                   So that was filed, and then Highland filed a motion to  
10 strike certain items that were in the appendix. And there was  
11 -- how many -- I've been counting pages here. I think there  
12 was a 365-page appendix. And Highland wanted to strike  
13 certain documents in that appendix. And then there was an  
14 alternative request by Highland to compel depositions of  
15 certain persons if those documents weren't stricken.

16                  So I felt the need for a status conference. After  
17 originally setting this motion for hearing, I decided to  
18 convert today to a status conference because, to be perfectly  
19 honest, I didn't understand what in the heck the Movants were  
20 procedurally seeking.

21                  Okay. So, I'm aware that Highland's motion to strike and  
22 Highland's motion to compel were later resolved by  
23 stipulation, but -- and then I guess an amended motion was  
24 filed by Movants. But I'm still confused, and so I just want  
25 to kind of talk about process and procedure.

1 I will say -- and I see Mr. Pomerantz on the video, and  
2 Ms. Hayward and many others -- if we want to talk more  
3 generally status, I'm open to that, because I have become  
4 aware that the Fifth Circuit affirmed in substantial part the  
5 confirmation order, so I don't know if, in light of that, the  
6 parties want to talk about big-picture status.

7 MR. POMERANTZ: Your Honor, I could address that  
8 briefly. I don't think we're prepared today --

9 THE COURT: Okay.

10 MR. POMERANTZ: -- for a number of reasons. One  
11 because the other adversaries aren't here. But suffice it to  
12 say we read the order and we intend to bring an appropriate  
13 motion before Your Honor to implement the Fifth Circuit  
14 opinion, and will do so relatively soon.

15 THE COURT: Okay. Thank you. All right. So, with  
16 that, let me go ahead and get formal appearances on the motion  
17 before the Court. So, for the Movants, Mr. Lang, are you the  
18 one appearing for the Movants?

19 MR. LANG: Yes, Your Honor.

20 THE COURT: All right. And for Highland, who do we  
21 have appearing on this motion, the status conference?

22 MR. POMERANTZ: Good morning. Jeff Pomerantz;  
23 Pachulski Stang Ziehl & Jones; on behalf of Highland Capital.

24 THE COURT: Okay. And I'll just ask. I know we have  
25 observers, but is there anyone else who wanted to make an

1 appearance on this particular motion?

2 (No response.)

3 THE COURT: All right. Well, Mr. Lang, I'm turning  
4 it over to you. Can you explain to me exactly what you're  
5 seeking with your motion? I know it's about recusal, --

6 MR. LANG: Sure.

7 THE COURT: -- but we've plowed a lot of ground, and  
8 I'm kind of confused about the --

9 MR. LANG: No, that's good. That's fair.

10 THE COURT: -- procedure.

11 MR. LANG: And I just want to let you know that we  
12 conferred with Highland's counsel, and they have no objection  
13 -- and I understand the Court, you know, has some issues that  
14 you want to discuss -- but they have no objection to our  
15 request to remove the reservation language.

16 Highland also, now that we have stipulated to the removal  
17 of the three documents that they had an issue with, Highland  
18 also doesn't object to Movants' appendix and supplementing the  
19 record. And likewise, Movants do not object to Highland's  
20 appendix and supplementation of the record. Just so you know,  
21 that's unopposed on those issues.

22 With respect to what we are seeking, we are seeking for  
23 the Court just to issue an order removing the reservation  
24 language. As the Court is aware, Judge Kinkeade raised the  
25 issue about that reservation language in the response

1 briefing. Highland seized upon that language and -- or,  
2 argued that the recusal order was not final because Your Honor  
3 had, you know, could potentially supplement or amend the  
4 recusal order in the future.

5 And we are trying to get this in a position to get this  
6 reviewed on appeal, even if it's through mandamus, and are  
7 trying to eliminate any obstacles that might pop up due to  
8 that reservation language. So, it's really that simple on  
9 that issue.

10 THE COURT: Okay. Let me --

11 MR. POMERANTZ: Your Honor, may I --

12 THE COURT: Well, yes, but let me just ask this one  
13 very basic question. If all you are seeking at the end of the  
14 day is for this Court to remove the one sentence at the end of  
15 the March order that provided the Court reserves the right to  
16 supplement or amend, why didn't you just file a motion saying  
17 that?

18 MR. LANG: Well, we say --

19 THE COURT: And what I'm talking about is it's a  
20 lengthy motion. As I mentioned, it had 365 pages of  
21 supplemental material. And that's why we're here on a status  
22 conference, because I didn't understand exactly what you were  
23 seeking to do. You know, why would you file such a thick  
24 motion if all you were seeking was for me to remove? Why  
25 wouldn't you have just said -- you know, I guess cited Rule

1 54? I guess that would be the applicable authority. I mean,  
2 so help me to understand. Have you evolved your approach?  
3 Did you originally think you wanted more and then now you're  
4 seeking to narrow it to just having the Court delete that  
5 sentence, or what?

6 MR. LANG: No. That goes to your second issue about  
7 the supplementation. You know, the United States Supreme  
8 Court in the *Liteky* case states that, you know, when you've  
9 got a recusal, you look at events occurring in the course of  
10 the proceedings that evidence deep-seated favoritism or  
11 antagonism. So you look at the entire course of the  
12 proceeding.

13 We put in additional examples. I think all but one of the  
14 transcripts was after the recusal motion was filed and after  
15 the order. And it is, you know, this isn't a single-issue  
16 case and it's not a situation where, you know, for example,  
17 the Court owns stock in a company that was one of the parties.  
18 This is, you know, from our perspective, it's an ongoing case  
19 that's still in process, and that in the course of the  
20 proceedings there have been statements made and things that  
21 happened that we believe are going to be reviewed to apply the  
22 standard.

23 And so it is -- the supplementation goes to things that  
24 happened after the recusal. And so we are supplementing to  
25 add that. And that's -- even the Fifth Circuit says that you



1 look at the entire course of the judicial proceedings when  
2 reviewing a recusal motion.

3 So that's -- that was the second point that you raised,  
4 which is why, 17 months after the order, are we supplementing?  
5 It is because the proceedings continued and we believe it's  
6 just additional examples and -- that support the relief that  
7 we request, and we're putting it in the record, and we wanted  
8 the Court to review it.

9 I think we say in the motion, or in the reply, you know,  
10 we don't -- we don't think the Court is going to come to a  
11 different conclusion, but regardless, we wanted to put the  
12 information in the record and put it before the Court, and the  
13 Court can review it and make the ruling that the Court is  
14 going to make, and then we'll just go from there.

15 THE COURT: All right. One more question for now,  
16 and then, Mr. Pomerantz, I'll hear from you.

17 Again, I care about procedure, as I hope any court does.  
18 It occurred to me that there were two ways that might  
19 procedurally be proper to raise the issues here. One, as I  
20 mentioned, just a simple, I guess, Rule 54 motion: Please,  
21 Judge, take out that last sentence of your order, because some  
22 day we want to have a final order that we can appeal. And I  
23 don't think taking out that order, I mean, that one sentence,  
24 is going to make it a final order.

25 But then the second -- so that could have been the motion.

1 Or you could have filed just a new motion to recuse, I guess,  
2 and added a new record.

3 But it just felt like you were -- well, I was just  
4 confused. That's why we're here. And I said I was going to  
5 turn to Mr. Pomerantz, but one more question for you. Do you  
6 think if I remove the one sentence from my March 2021 order,  
7 all of a sudden you have a final appealable order that you  
8 could immediately file a new appeal on?

9 MR. LANG: No. What I previously said was that that  
10 language, as Highland argued, creates, you know, an argument  
11 that the Court has left open the issue on recusal. And we  
12 think that removing that language makes Your Honor's ruling on  
13 this final for purposes of allowing us to seek mandamus. So  
14 that's -- that's why we -- just remove the argument that if we  
15 seek mandamus, that, no, the Court is not done with this  
16 issue, the Court has left open the prospect, you know,  
17 prospect of later amending or supplementing the ruling. And  
18 so we're just trying to get that hurdle out of the way.

19 THE COURT: Okay. So you acknowledge that if the  
20 last sentence is removed, it's still not going to be a final  
21 appealable order because of the posture of the bankruptcy  
22 case, but you think it somehow gives you the ability to seek a  
23 petition for writ of mandamus?

24 MR. LANG: I think it removes an argument when we  
25 seek a petition for writ of mandamus that this is not -- that

1 the Court is not done with this issue and therefore it would  
2 be premature.

3 So we're just removing -- again, the argument was made  
4 after Judge Kinkeade raised the issue about that language in  
5 the order, the argument was made by Highland that that  
6 language means that the Court is not done with the issue,  
7 potentially not done, and the Court reserved the right to  
8 visit that issue at a later date, and therefore, you know, the  
9 judge -- the Court's not done dealing with the issue.

10 So we are asking the Court, just remove that language,  
11 remove that potential obstacle, and allow us to go forward  
12 with whatever procedural rights we have.

13 THE COURT: Okay.

14 MR. LANG: We're not asking the Court --

15 THE COURT: I'm just trying --

16 MR. LANG: -- to declare --

17 THE COURT: I'm trying not to waste judicial  
18 resources. And as I understood the Judge Kinkeade ruling,  
19 which I went back and read -- I hadn't read it before you  
20 filed this new motion -- while he makes a passing reference to  
21 the last sentence of my March 2021 order, he gives about five  
22 reasons why an order denying a motion to recuse is not a final  
23 appealable order until the end of the proceedings it's filed  
24 in.

25 And so I read the opinion as there was established case

1 law that, even if that last sentence hadn't been in there, you  
2 didn't have a final appealable order. Do you read it  
3 differently?

4 MR. LANG: No, I don't read his opinion differently.  
5 And that's why I said that, you know, as far as the petition  
6 for writ of mandamus, we don't have to have a final -- the  
7 proceeding doesn't have to be final. It's a different avenue  
8 for appeal.

9 And so Judge Kinkeade did not consider, even though we  
10 asked him to go ahead and just consider this a petition for  
11 writ of mandamus, Judge Kinkeade denied that request, so he  
12 did not rule on that issue. And that's why, again, removing  
13 the language eliminates the argument under the mandamus --  
14 when the mandamus is filed, it just eliminates the argument  
15 that the Court is not done dealing with the issue.

16 THE COURT: He denied -- okay. Well, there was  
17 something in that ruling that made you think, hey, if you go  
18 back and get this last sentence removed, then maybe I would  
19 consider a petition for writ of mandamus in this context?

20 MR. LANG: No. At the end of the order, he said he  
21 denies Appellants' request to construe their appeal as a  
22 petition for writ of mandamus. So the way it was procedurally  
23 postured, he said it could not be appealed.

24 THE COURT: Did --

25 MR. LANG: But the mandamus position remains open.

1 And when he, being Judge Kinkeade, after the briefs were  
2 filed, he obviously was looking at it, he questioned his  
3 jurisdiction, he requested briefing on the jurisdiction,  
4 because in that order that he sent out requesting the  
5 briefing, he pointed out -- you know, one of the issues he  
6 pointed out was the Court's language, the reservation language  
7 in the order. And, again, Highland argued that because of  
8 that language, among other things, that language made the  
9 order not final.

10 So all we're saying, all we're asking is just remove that  
11 language so when we file the writ of mandamus that argument  
12 isn't there. The Court is done dealing with the issue.  
13 Nobody can disagree with it.

14 You know, nobody -- Highland is not agreeing that we, you  
15 know, can seek mandamus, so I'm not saying that. And I'm not  
16 asking the Court to agree to that. Mandamus is a -- we  
17 believe is an option. It's still on the table. And we're  
18 just dealing with one issue that came up before and just  
19 trying to head it off before -- so that we don't have to come  
20 back down and ask the Court to remove it later.

21 THE COURT: All right. Mr. Pomerantz, what do you  
22 want to say about this?

23 MR. POMERANTZ: So, Your Honor, this is extremely  
24 frustrating. I know Your Honor had said you didn't want to  
25 waste Court time. There has already been a tremendous amount

1 of Court time that's wasted.

2 When we got this motion, it was a head-scratcher. We read  
3 it as seeking way more things than what Mr. Lang is saying  
4 now. If he had called up and asked us if we had any issue,  
5 subject to Your Honor's agreement, to remove that last  
6 sentence, we would have said we don't, because the briefing  
7 before the District Court and the District Court's decision  
8 have really nothing to do with that last sentence. Maybe the  
9 -- Judge Kinkeade mentioned it in his December order, but it's  
10 clear, as Your Honor mentions, from the reading of the  
11 District Court opinion that it is irrelevant.

12 And the argument that the Court, the District Court which  
13 denied interlocutory appeal is somehow, once that sentence is  
14 eliminated, going to entertain and grant a writ of mandamus is  
15 farcical. It's just not going to happen. And unfortunately,  
16 what's going to happen is we're going to have to spend more  
17 time, more money, and more effort.

18 And Your Honor, I know the motion to strike has been  
19 resolved, but I'd just like to mention it, because this is --  
20 continues to be frustrating from the Highland side. They  
21 filed an appendix that sought to slip in three letters written  
22 by attorneys for various Dondero entities that were  
23 essentially a smear campaign, a smear campaign on Mr. Seery, a  
24 smear campaign on the Independent Directors, incidentally,  
25 which may be actionable in its own right.

1 That had nothing to do with bias. They wanted to slip  
2 that in, somehow it would get into the appellate record, if  
3 and when they ever got to an appeals court.

4 So what do we do, Your Honor? We called them up, called  
5 Mr. Lang up and said, will you withdraw the letters? There's  
6 no basis for those to be included in the appendix. He said  
7 no. Said, okay, will you make the deponents -- the people who  
8 wrote the letters available for deposition? Wouldn't agree to  
9 that, either.

10 And then we go to the time and the money, we file our  
11 motion to strike, and lo and behold, which has become a  
12 considerable pattern in this case, Your Honor, what does Mr.  
13 Lang do? He calls up and says, I will withdraw the letters.  
14 Okay? That's aside. We got what we wanted. There's nothing  
15 we can do. But it is kind of frustrating, how that -- how  
16 that played out.

17 Your Honor, this motion, to the extent it asks for that  
18 sentence to be removed, that's fine. Again, we think it's a  
19 legal nullity. What Mr. Lang asked for in his motion is for  
20 Your Honor to issue a final order. Your Honor can't determine  
21 whether your order is final. We've made that point in our  
22 opposition. It seems maybe now Mr. Lang is walking back on  
23 that. There's nothing you can do. Your Honor can issue an  
24 order; it'll be up to the District Court.

25 With respect to the supplement, Your Honor, as we put in

1 the record, we think all the quote/unquote evidence that was  
2 submitted just is a severe mischaracterization of the record.  
3 And it's important, Your Honor, that not only does the -- we  
4 agree that the evidence can come in, but we think Your Honor  
5 has to make a determination whether those additional  
6 allegations of bias and evidence do in fact demonstrate bias.  
7 What we think Mr. Lang wanted to do, or the Appellants wanted  
8 to do, or the Movants, they wanted to have that information  
9 come in and argue at first blush to the Appellate Court that  
10 that is bias, without having had Your Honor make the initial  
11 determination, as you would have if there was a motion to  
12 reconsider, as you would have if there was a new motion.

13 And so we think it's very important that Your Honor  
14 consider those additional allegations. We think categorically  
15 they do not demonstrate any bias, and our Exhibit A goes  
16 through each item and points out the severe  
17 mischaracterizations.

18 So, Your Honor, we've wasted a lot of time. We've wasted  
19 a lot of money. But if all they want is to remove that  
20 sentence, supplement the record, have Your Honor deny the  
21 motion yet again after considering the additional evidence, we  
22 do not have an opposition to that. But it was -- kind of took  
23 a long time and a lot of money to get to this place.

24 Thank you, Your Honor.

25 THE COURT: All right. And Mr. Lang, on the subject



1 of it took a lot of time and a lot of money, estate resources,  
2 to get to this place, I just want to note a couple of things.  
3 And I guess I'm happy to hear any response to these things  
4 that I feel very frustrated about.

5 Again, my focus at this point is judicial resources as  
6 well as estate resources. And no judge, no judge looks  
7 lightly on a motion to recuse. Okay? Any judge, I would  
8 think, is going to have some self-introspection. Like, oh my  
9 goodness, what would motivate someone to think this needs to  
10 be urged?

11 But, so on the topic of -- again, I want you to respond to  
12 this, Mr. Lang -- my concern about judicial resources and  
13 estate resources.

14 The timeline here -- and I always talk about timelines, I  
15 know -- but this Court signed the confirmation order in this  
16 case February 22, 2021, and your motion to recuse was filed  
17 about a month later, March 18, 2021. Now, here's the first  
18 thing I'll mention about judicial resources and estate  
19 resources. Your motion and brief to recuse included an  
20 appendix that was 200 -- no, excuse me, 2,722 pages long.  
21 Okay?

22 So any judge, again, has to take it seriously when a  
23 motion to recuse is filed. And the standard is I have to  
24 stand back and look at would a reasonable person have concerns  
25 here. So I can't just say, I know I'm not biased, I don't

1 think I'm biased; I have to look at what a reasonable person  
2 might think.

3 So you presented to me a 2,722-page appendix for me to do  
4 my job and look at what would a reasonable person think. So,  
5 then would it raise a doubt in the mind of a reasonable  
6 observer as to the judge's impartiality?

7 So I think here's another point that goes to judicial  
8 resources. I had my law clerk, just out of curiosity, count  
9 up for me how many orders that I had signed as of the day that  
10 the motion to recuse was filed, March 18, 2021, and I had  
11 presided over the bankruptcy case for 15 months at that point,  
12 but it had been in Delaware for two months before Dallas. On  
13 the day you had filed your motion to recuse, March 18, 2021, I  
14 had signed 263 orders in the Highland bankruptcy case and the  
15 adversary proceedings. It's a lot more now, of course. But  
16 so I suppose, if I was really to do my job thoroughly, I might  
17 look not merely at your 2,722 pages of appendix attached to  
18 your motion to recuse, but all 263 orders I had entered to  
19 see, hmm, would a reasonable observer question my  
20 impartiality?

21 So, anyway, this is all about judicial resources and  
22 estate resources. So, going down the timeline, March 23,  
23 2021, five days after you filed the motion to recuse -- after,  
24 I will tell you, I won't say I dropped everything to pore  
25 through this, but spent a lot of time -- I issued an order

1 denying the motion to recuse.

2 Now, here's inside baseball, okay, if there ever was: The  
3 last sentence, reserving the right to supplement or amend,  
4 here's why I did it. I didn't know it would cause a brouhaha.  
5 Maybe I didn't give it enough thought. But in reading the  
6 case law during those many days and hours I spent focusing on  
7 your motion to recuse, I realized that most of the case law  
8 says you don't have to have a hearing, okay, the statute  
9 doesn't require a hearing, the case law says you don't have to  
10 have a hearing. And I cited some of that my order. But I  
11 thought, these Movants, after seeing this order, they may come  
12 back and say, you didn't give us our day in court. We wanted  
13 a hearing. We weren't just going to rely on our 2,722-page  
14 appendix. We wanted to put on witnesses.

15 So I didn't have to stick that sentence in there, but I  
16 was just sort of anticipating what the Movants might do.

17 Okay. So, live and learn. I guess I won't, if I'm ever  
18 confronted with the situation again, do that. But that's what  
19 that was about.

20 So, my law clerk went and looked at the appellate record  
21 in the past few days, because, I mean, again, head-scratcher.  
22 We were trying to get a feel for how big a deal was this  
23 sentence, okay, to the District Court, if at all. But anyway,  
24 we happened to note that in July, July 20, 2021, the District  
25 Court record on appeal was supplemented with 1,001 more pages

1 of record. So I guess, goodness gracious, poor Judge Kinkeade  
2 and his staff, they had 3,723 pages of appendix. I don't even  
3 know if that's all. You know, I don't know.

4 But so Judge Kinkeade dismissed the appeal because he said  
5 my order was interlocutory on February 9, 2022, and then we  
6 didn't see a motion for rehearing or an appeal to the Fifth  
7 Circuit or a petition for writ of mandamus to the Fifth  
8 Circuit. Five and half months later, this new motion for  
9 final appealable order and supplement to the motion to recuse  
10 is filed, containing 365 more pages. And then I see that, Mr.  
11 Lang, you filed an amended motion to take out certain of the  
12 items, with the agreement, the stipulation that was reached  
13 with Debtor's counsel, so it's now a 154-page appendix.

14 But I should add that, in Highland's objection to your  
15 latest motion, they attached 86 exhibits, and I couldn't count  
16 all those exhibits, but it was more than 5,500 pages. And it  
17 was, as I understood it, sort of almost like a rule of  
18 optional completeness. If you're going to submit these 154  
19 pages to supplement the record, we think you need to attach  
20 more than snippets of a transcript here and there. You need  
21 to have the whole context.

22 So, anyway, I -- you know, look at what you're doing. I'm  
23 just -- and I guess I could totally appreciate and understand  
24 if there had been a brief order from Judge Kinkeade saying,  
25 because of that one sentence, this is an interlocutory order,

1 no leave to appeal an interlocutory order is warranted, end of  
2 order. And, frankly, when you filed your motion, this latest  
3 motion, having not seen Judge Kinkeade's order, I thought  
4 that's what it was going to say.

5 So, from the tone of your motion, it sounded like that's  
6 all his order was about, just: I have a problem with this  
7 last sentence, it makes the whole order interlocutory. And  
8 then I go back and read it and he gives four or five different  
9 reasons why an order denying a motion to recuse is  
10 interlocutory until the end of the case. I know that's a  
11 bizarre concept in the world of bankruptcy, but he considered  
12 this is even the rule in the world of bankruptcy.

13 So, anyway, help me to understand why this isn't  
14 unnecessary carpet-bombing the Court, me and whoever might  
15 hear your petition for writ of mandamus, and the Debtor  
16 estate, carpet-bombing us with paper and causing us to expend  
17 resources. And, again, we've got this backdrop of the  
18 original motion to recuse being filed 15 months after I  
19 started presiding over the case and after I had signed 263  
20 orders.

21 Please, Mr. Lang, please help me to understand if this is  
22 warranted. Why, I mean, help me to understand why this is not  
23 wasting resources in your view and why this isn't just some  
24 strategy. Again, I'm trying to not play psychologist, I'm  
25 really trying to understand why you think this is fine.

1 MR. LANG: Well, Your Honor, we've moved to recuse,  
2 and we've stated the grounds, and we have put in documents  
3 from the record that we think support those grounds. We have  
4 not unnecessarily carpet-bombed. We've cited to the various  
5 transcripts. The length of the record is directly related to  
6 the length of the transcripts mostly, the various transcripts  
7 throughout the proceeding. And so, you know, with respect to  
8 the 2,722 pages of appendix, most of those are just complete  
9 copies of transcripts.

10 But again, we're just creating our record to support our  
11 position on our motion. And the current motion is eight  
12 pages. It's got reference to the additional grounds that  
13 we've set forth that we think support our motion. And we  
14 attached the various documents and transcripts that, again,  
15 support -- we think support our position. And we're making  
16 our record for appeal.

17 And as far as Mr. Pomerantz and the withdrawing of the  
18 letters, you know, I was getting ready for trial when Mr.  
19 Morris called. And he said, they're hearsay. We had a brief  
20 conversation. I disagreed. They filed their motion. When I  
21 got the time to look at it, I read through it, and Mr. Morris  
22 and I had a conversation, and we decided, you know what, we  
23 don't need them, we'll pull them out. Let's just do away with  
24 this issue. It's not worth the time to deal with it.

25 I'm sorry they had to file their motion. But, you know, I

1 couldn't drop everything at that moment to look through. And  
2 again, the reason that he gave was hearsay. So, you know,  
3 it's not gamesmanship. It was just, look, you know, when we  
4 got down to looking at it, when I looked at it, I decided it  
5 wasn't worth the effort and the hassle, and we agreed to pull  
6 them down and withdraw them. And that's why I filed the  
7 amended motion.

8 As far as the current appendix, Your Honor, we're just  
9 making a record. You know, we're trying to get this thing  
10 reviewed. We're making sure the Court is aware of all the  
11 grounds and having considered all the grounds and all the  
12 actions that we think support our motion. We're giving the  
13 Court the opportunity to look at it, and then just enter the  
14 order without that language and we'll deal with the mandamus.

15 Again, the issue is ultimately going to be reviewed.  
16 We're trying to get it reviewed. And you're right, you know,  
17 we don't have to, you know, you didn't have to have a hearing  
18 on the first deal, you don't have to have a hearing on this  
19 one.

20 THE COURT: Okay.

21 MR. POMERANTZ: Your Honor, this is -- this is just  
22 one more match in furtherance of Mr. Dondero's stated desire,  
23 as you've heard many times, to burn the place down. We would  
24 have hoped, and I guess it would have been naïve to hope, as I  
25 know Your Honor has hoped throughout the case, that at some

1 point in time the Dondero side would stop blaming Your Honor,  
2 blaming Mr. Seery, blaming the estate, and actually look at  
3 what he can do to put an end to this. Pay his notes, stop  
4 raising frivolous claims, so everyone can go on with his life.  
5 That's what the estate wanted to do and wants to do. That's  
6 what Mr. Seery wants to do. Unfortunately, Mr. Dondero  
7 doesn't seem capable of it, and this is just one more match on  
8 the flames. And Mr. Lang, doing his job, following his  
9 client's wishes, is just one more player in that. But it is  
10 extremely frustrating.

11 THE COURT: Okay. All right. Here's what I'm going  
12 to do. First, I'm simply going to deny the pending amended  
13 motion for final appealable order and supplement to motion to  
14 recuse, as it is procedurally improper as framed. Okay? It  
15 was kind of like a Rule 54 motion. It was kind of like a new  
16 motion to recuse. It was kind of like a Rule 59 motion for,  
17 you know, new -- to put in new evidence, have a new trial, but  
18 way untimely for that.

19 So I'm just denying the motion that's before me. Okay?  
20 And by doing that, I mean, I guess, I guess the stipulation  
21 and order that's before me on the motion to strike and the  
22 motion to compel, I guess I'll -- it's in my queue, I'll sign  
23 it, unless someone tells me there is a reason it doesn't make  
24 sense to sign it.

25 But I'm denying the motion before me. But just so it's



1 clear, Mr. Lang, it's without prejudice to you either filing a  
2 simple Rule 54 motion, without attachments, that simply asks  
3 me to strike the last sentence of my original order denying  
4 your motion to recuse from March 2021.

5 If you give me a simple Rule 54-based motion simply asking  
6 me to strike that sentence, I'll sign it. Without a waiting  
7 period. Without a hearing. And I assume Mr. Pomerantz  
8 doesn't have a problem with that.

9 MR. POMERANTZ: That is correct, Your Honor. If all  
10 that motion asks for, we would not oppose that.

11 THE COURT: Okay. It's also, my ruling today denying  
12 your motion, is without prejudice to you filing a new motion  
13 to recuse, if that's what you want to do, to start this over  
14 and supplement the record.

15 But, you know, proceed as you will. This Court is going  
16 to do its duty. And, well, if you want to do that, you do  
17 that, but I'll have a more elaborate order if I have to rule  
18 on a new motion to recuse. Among other things, I'm going to  
19 point out to the Court above, whoever hears this, that because  
20 I think timeliness was always an issue I raised in your  
21 original order, you know, filing a motion to recuse after  
22 confirmation, 15 months after this judge was assigned to the  
23 case, and after the judge had signed 263 orders.

24 You know, we have case authority, as I'm sure you  
25 researched and know, that talk about timeliness. Even though

1 it's not baked into the statute, 28 U.S.C. Section 455, it is  
2 a factor. And so this is not *A v. B* litigation. This is a  
3 case affecting many, many people. And at some point, don't we  
4 have to wonder why a motion would be filed after 263 orders?  
5 If your clients legitimately think there was bias, I don't  
6 know why they didn't raise the issue way, way earlier in the  
7 case.

8 And that's why these appendices are so huge, right? It  
9 dovetails with the timeliness. Okay? Fifteen months.  
10 There's a huge, huge, huge, huge record.

11 So, anyway, do you have any questions, Mr. Lang?

12 Again, I will say it for at least the third time this  
13 morning: I'm worried about judicial resources and estate  
14 resources. Okay? And, you know, I have to worry about I'll  
15 loosely call my bosses, okay, you know, the courts that grade  
16 my papers. The District Court who hears appeals and hears  
17 petitions for writ of mandamus. The Fifth Circuit. They're  
18 going to get frustrated with me if -- well, you know, if, for  
19 example, I had ruled on this motion before me today, a clearly  
20 procedurally defective motion. And if I just willy-nilly let  
21 people put things in the record without a procedurally proper  
22 basis, it just makes more work for the Court of Appeals,  
23 right?

24 So it's not just about the lawyers here. It's not just  
25 about me and my staff. It's about the people who grade my

26

1 papers. If I granted your motion as it's pending here before  
2 me today, I have every reason to think, whether it's Judge  
3 Kinkeade or the Fifth Circuit, they would think, what is this  
4 judge doing? Okay? So it's just procedurally defective, what  
5 you filed. Okay? But, again, you've got the ruling. Do you  
6 have any questions?

7 MR. LANG: I don't.

8 THE COURT: We're adjourned.

9 THE CLERK: All rise.

10 (Proceedings concluded at 10:25 a.m.)

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CERTIFICATE

21 I certify that the foregoing is a correct transcript from  
22 the electronic sound recording of the proceedings in the  
above-entitled matter.

23 **/s/ Kathy Rehling**

**08/31/2022**

24

25 Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

Date

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